

NOT FOR PUBLICATION

UNITED STATES DISTRICT COURT  
DISTRICT OF NEW JERSEY

ALLAN SCHUSTER,	:	
	:	
Plaintiff,	:	Civil No. 08-3113 (AET)
	:	
v.	:	<b><u>MEMORANDUM &amp; ORDER</u></b>
	:	
JON CORZINE, et al.,	:	
	:	
Defendants.	:	
	:	

THOMPSON, U.S.D.J.

This matter is before the Court on Plaintiff Allan Schuster's Motion to Stay the Court's June 23, 2008 Order, directing Plaintiff to file an Amended Complaint and pay a filing fee of \$350.00. The Court has decided this Motion based upon Plaintiff's unopposed submission and without oral argument pursuant to Fed. R. Civ. P. 78. For the reasons set forth below, Plaintiff's Motion is denied.

**BACKGROUND**

On May 12, 2008, Plaintiff, who is a prisoner at the New Jersey State Prison, and thirty-seven (37) other prisoners, filed a *pro se* Complaint against a number of state Defendants, alleging, *inter alia*, "retaliation, denial of access to the Court, denial of religious services, unlawful placement, and deplorable environmental conditions." (Pl.'s Mot. to Stay, ¶ 2.) The plaintiffs jointly paid the filing fee of \$350.00. (*Id.*, ¶ 7.) On June 23, 2008, Chief Judge Brown entered an Order dismissing all plaintiffs except the named plaintiff, Boris Boretsky, from the

original action, and directing the Clerk's office to assign new docket numbers for each of the dismissed plaintiffs (the "June 23rd Order"). The June 23rd Order also directed each plaintiff to file an amended complaint, and either prepay the filing fee of \$350.00, or file an application for leave to proceed in forma pauperis. Plaintiff Schuster's new docket number was assigned to this Court.

On July 25, 2008, Plaintiff Schuster filed this Motion to Stay the June 23rd Order pending appeal to the Third Circuit, contending that it was "inappropriate for the Court to require each pro se Plaintiff to pay \$350.00 filing fee." (Id., ¶ 8.) On August 7, 2008, the Court received Plaintiff's Amended Complaint.

#### DISCUSSION

##### A. Stay of the June 23rd Order

A court considers four factors in deciding whether to grant a stay of an order: (1) likelihood of success on the merits; (2) irreparable injury to the party requesting a stay; (3) substantial injury to the other interested parties in the proceeding; and (4) the public interest. Republic of the Philippines v. Westinghouse Elec. Corp., 949 F.2d 653, 658 (3d Cir. 1991).

The Court finds that these factors weigh against granting a stay. The Prisoner Litigation Reform Act ("PLRA") requires a prisoner seeking permission to file a civil rights complaint in forma pauperis to file an affidavit of poverty and a prison account statement for the six-month period immediately preceding the filing of the complaint. 28 U.S.C. § 1915(a)(2). If the prisoner is granted permission to proceed in forma pauperis, the Court is required to assess the \$350.00 filing fee against the prisoner, by collecting it in installments from the plaintiff's prison account in accordance with the schedule set forth in 28 U.S.C. § 1915(b). Plaintiff has not provided any

legal precedent that would lead the Court to conclude that he has a likelihood of success on the merits of his appeal, i.e., that the Third Circuit would find that Plaintiff is not required to pay the \$350.00 filing fee, but instead can contribute to a joint filing fee with co-plaintiffs. Next, the Court finds that Plaintiff will not be irreparably harmed by being required to pay the \$350.00 filing fee. Plaintiff may apply for leave to proceed in forma pauperis, and the \$350.00 filing fee may be paid in installments, over time. Finally, the delay that would result from a stay would be injurious to the parties in the litigation, as well as to the public interest. Accordingly, the Court denies Plaintiff's Motion to Stay the June 23rd Order.

CONCLUSION

For the foregoing reasons, and for good cause shown,

IT IS on this 12th day of September, 2008,

ORDERED that Plaintiff Allan Schuster's Motion to Stay the Court's June 23, 2008 Order [3] is DENIED.

s/ Anne E. Thompson  
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ANNE E. THOMPSON, U.S.D.J.